



U.S. Dep:

United States
Southern

86 Chambers Street
New York, New York 10007

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 6/22/2021

June 21, 2021

VIA ECF

Honorable Analisa Torres
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Rosario v. Decker*, No. 21 Civ. 4815 (AT)

Dear Judge Torres:

This Office represents the government in the above-referenced immigration habeas matter. The government's response to the petition is due June 22, 2021. *See* ECF No. 6. I write respectfully to request permission to file under seal a declaration regarding the petitioner's mental health diagnoses and treatment, which also attaches his mental health medical records from the Orange County Jail. Consistent with Section IV(A)(ii) of this Court's Individual Rules, these documents will be filed under seal on ECF and electronically related to this letter motion.

The government respectfully submits that sealing is appropriate notwithstanding the presumption of access discussed by the Second Circuit in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006), in light of the privacy interests of individuals in their medical records. *See, e.g., Barnwell v. FCI Danbury*, No. 3:10-CV-01301 (DJS), 2011 WL 5330215, at *5 (D. Conn. Nov. 3, 2011) (noting a rebuttable presumption of openness of court filings, but granting motion to seal in light of federal law's treatment of such records as confidential pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L. 104-191 (1996)). Courts in this District have permitted the sealing of medical records, even if specific details relating to the individual's health appear on the record. *See, e.g., United States v. Needham*, 460 F. Supp. 3d 323, 324 n.1 (S.D.N.Y. 2020); *United States v. Estevez*, No. 18 Cr. 669 (JPO), 2020 WL 1911207, at *1 (S.D.N.Y. Apr. 20, 2020); *United States v. Ebberts*, 432 F. Supp. 3d 421, 423 n.1 (S.D.N.Y. 2020) (noting defendant's waiver through "extensively citing to his medical records and medical history in his own motion, in correspondence with the Court, and in open Court during oral argument on his motion").

Petitioner's counsel consents to this request.

I thank the Court for its consideration of this request.

Respectfully submitted,

AUDREY STRAUSS
United States Attorney for the
Southern District of New York

By: s/ Joshua E. Kahane
JOSHUA E. KAHANE
Assistant United States Attorney
86 Chambers Street, 3rd floor
New York, New York 10007
Telephone: (212) 637-2699
Facsimile: (212) 637-2786
E-mail: joshua.kahane@usdoj.gov

cc: Counsel of Record (via ECF)

GRANTED. Petitioner's privacy interest in his medical information outweighs the public right of access to judicial documents.

SO ORDERED.

Dated: June 22, 2021
New York, New York



ANALISA TORRES
United States District Judge